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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JAMES H. FISHER,

11 Plaintiff,

No. CIV S-96-1850 DFL PAN P

12 vs.

13 JAMES GOMEZ, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is a state prisoner, without counsel, seeking relief pursuant to 42 U.S.C.
17 § 1983. He has filed a document styled, "Motion to Set Aside Trial Date."

18 Plaintiff requests the court to continue the trial date and to request defendants to
19 notify the court of whether they would consider settling this matter. Since plaintiff served his
20 motion on defendants' counsel, he has himself made the inquiry. The court will not continue the
21 trial date absent a showing of good cause. See Fed. R. Civ. P. 16(b).

22 Plaintiff requests the court to enter judgment as a matter of law against defendant
23 Harris, asserting:

24 Plaintiff believes, if the record is correct and the position of
25 the defendant is that he is without counsel, which means that the
26 defendant has defaulted, plaintiff seeks a judgment as a matter of
law against D. Harris, and plaintiff seeks all the relief he asked for

1 against this defendant, and any and all other relief the court deems
2 appropriate.

3 Plaintiff's Motion at 3.

4 Plaintiff does not allege grounds sufficient for judgment as a matter of law with
5 respect to his remaining claim against D. Harris, i.e., that D. Harris used excessive force against
6 plaintiff. See Fed. R. Civ. P. 56.

7 Plaintiff requests the court to permit him to conduct additional discovery.
8 Discovery closed February 4, 2000. To conduct additional discovery, plaintiff must show good
9 cause for modifying the schedule made October 21, 1999. See Fed. R. Civ. P. 16(b). Good
10 cause exists when the moving party demonstrates he cannot meet the deadline despite exercising
11 due diligence. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

12 Plaintiff wants to obtain documentary evidence from defendants' personnel files
13 showing defendants have used excessive force against other prisoners since discovery closed.
14 Plaintiff concedes he timely obtained discovery of similar information. The court finds that the
15 possibility of new evidence of a party's character does not constitute good cause for modifying
16 the schedule.

17 Accordingly, IT IS HEREBY ORDERED that

18 1. Plaintiff's April 4, 2006, motion to set aside trial date is denied; and

19 2. Within 20 days of the date of this order, plaintiff shall file and serve a pretrial
20 statement. Defendants shall file their pretrial statement 15 days thereafter.

21 DATED: May 4, 2006.

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24 UNITED STATES MAGISTRATE JUDGE

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